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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,908	11/21/2000	Mitsuo Watanabe	001539	3329

23850 7590 02/26/2003

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 02/26/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/700,908

Applicant(s)

WATANABE ET AL.

Examiner

Walter B Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on December 2, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 and 18-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-17 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Acknowledgement of Applicant's Amendments

1. The amendments made in the abstract given on pages 1 and 12 of Applicant's Amendment (Paper #11) have been received and considered by Examiner.
2. The amendments made in Claims 11-17 given on pages 2-3 and 12-15 of Applicant's Amendment (Paper #11) have been received and considered by Examiner.
3. The addition of new claim 25 in Paper #11 has been acknowledged by Examiner.

WITHDRAWN OBJECTIONS

4. The objection made to the abstract in Paper #8, page 2, paragraph 2 has been withdrawn due to Applicant's amendments.

WITHDRAWN REJECTIONS

5. The 35 U.S.C. 112 rejection of claims 11-17 of record in Paper #8, pages 3-6, paragraph 5 has been withdrawn due to Applicant's amendments in Paper #11.
6. The 35 U.S.C. 102 rejection of claims 11-13 and 16 as anticipated by Nakagawa of record in Paper #8, page 7, paragraph 8 has been withdrawn due to Applicant's amendments and has been replaced with the new 35 U.S.C. 102 rejection of claims 25, 11-13 and 16 as anticipated by Nakagawa made in this Office Action.
7. The 35 U.S.C. 103 rejection of claim 14 over Nakagawa in view of Adams et al. of record in Paper #8, page 8, paragraph 10 has been withdrawn due to Applicant's amendments.
8. The 35 U.S.C. 103 rejection of claim 15 over Nakagawa in view of Stier et al. of record in Paper #8, page 9, paragraph 11 has been withdrawn due to Applicant's amendments.

9. The 35 U.S.C. 103 rejection of claim 17 over Nakagawa in view of Seymour et al. of record in Paper #8, pages 9-10, paragraph 12 has been withdrawn due to Applicant's amendments.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

10. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear whether or not the "textured surface layer" is the same layer, or is a different layer, than the "surface layer" recited prior to the "textured surface layer" in claim 15 and recited in claim 15.

Claim Rejections - 35 USC § 102

11. Claims 25, 11-13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakagawa.

In regard to claim 25, Nakagawa teaches a synthetic resin container (paragraph 01) comprising an acrylic resin sheet (the surface layer as claimed) coated with a thermoplastic reinforcement layer (the outer reinforcing shell layer as claimed) (paragraph 08). Nakagawa teaches that acrylonitrile-butadiene-styrene (ABS) plastics is the preferred class of plastics for the thermoplastic reinforcement layer (paragraphs 19 and 34). The recitation "wherein said surface layer is produced by subjecting a synthetic resin sheet to two-step thermoforming" is a method limitation that has not been given patentable weight, since the method of forming the surface layer is not germane to the issue of patentability of the surface layer itself. The recitation

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that the outer reinforcing shell layer is obtained by subjecting the ABS resin “to injection molding” is a method limitation that has not been given patentable weight, since the method of forming the outer reinforcing shell layer is not germane to the issue of patentability of the outer reinforcing shell layer itself.

In regard to claim 11, Nakagawa teaches that the acrylic resin sheet is transparent (paragraph 23). Nakagawa teaches that additives such as bulking agents (i.e., fillers) and coloring agents are added to the thermoplastic outer reinforcing shell layer requisite to need (paragraph 35-36). Nakagawa teaches that marble patterns are made in the thermoplastic outer reinforcing shell layer, and that the thermoplastic outer reinforcing shell layer is colored (paragraph 23).

In regard to claim 12, Nakagawa teaches that the acrylic resin sheet is colored (paragraph 16).

In regard to claims 13 and 16, Nakagawa teaches that glass fibers of about 1-6mm are used to raise rigidity of the acrylonitrile-butadiene-styrene thermoplastic outer reinforcing shell layer (paragraphs 20, 22 and 34-38).

Claim Rejections - 35 USC § 103

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagawa in view of Adams et al., and in further view of Akamatsu.

Nakagawa teaches the patterned molded article as discussed above. Nakagawa teaches that marble patterns are made in the thermoplastic outer reinforcing shell layer (paragraph 23). Nakagawa fails to teach that the surface layer is made of translucently or transparently colored ABS resin or AS resin. Adams et al., however, teach an assembled sanitaryware article with

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appearance component 1 (Figures 1 and 2 and col. 3, lines 29-35). Examples of sanitaryware vessels are given on col. 1, lines 5-10). Adams et al. teach that sanitaryware appearance components are formed from acrylonitrile-butadiene-styrene (col. 3, lines 41-47). Figures 1 and 2 show that appearance component 1 is the structural analog of applicants' surface layer, i.e., both the appearance component 1 of Adams et al. and the surface layer of applicants would be in contact with any material (such as water) that is placed inside the molded article. Furthermore, Akamatsu teach molded articles formed from translucent acrylonitrile-butadiene-styrene (ABS) resin (col. 7, lines 46-47); thus, Akamatsu establish that it is notoriously well known that acrylonitrile-butadiene-styrene (ABS) resin is available as a translucent resin. Therefore, one of ordinary skill in the art would have recognized to use translucent ABS resin as the material of the surface layer of Nakagawa since Adams et al. teach that it is notoriously well known to use ABS resin as the material for sanitaryware vessels that are exposed to any material that is held in the vessel, and since Akamatsu establish that it is notoriously well known that acrylonitrile-butadiene-styrene (ABS) resin is available as a translucent resin.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used translucent ABS resin as the material of the surface layer of Nakagawa since Adams et al. teach that it is notoriously well known to use ABS resin as the material for sanitaryware vessels that are exposed to any material that is held in the vessel, and since Akamatsu establish that it is notoriously well known that acrylonitrile-butadiene-styrene (ABS) resin is available as a translucent resin.

13. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagawa in view of Stier et al.

Note that the recitation "obtained by subjecting said surface layer to thermoforming twice when said outer reinforcing shell layer is subjected to an injection molding" is a method limitation and has not given patentable weight, since the method of forming the surface layer and the outer reinforcing shell layer is not germane to the issue of patentability of the surface layer and the outer reinforcing shell layer itself.

Nakagawa teaches the molded container as discussed above. Nakagawa fails to teach that the surface layer is provided with a skid-preventing means comprising a textured surface layer. Stier et al., however, teach a prefabricated, slip resistant surface coating comprising film 16 which has embedded in the film 16 a plurality of finely-divided abrasive materials that clearly comprises a textured surface (col. 2, line 63-col. 3, line 5 and Figure 2). Stier et al. teach the application of the slip-resistant surface coating to a bathtub (Figure 3 and col. 4, lines 31-39) to reduce the hazard presented by wet bathtubs (col. 1, lines 15-16). Therefore, one of ordinary skill in the art would have recognized to apply the slip-resistant surface coating to the acrylic resin sheet of the molded container of Nakagawa in order to reduce the hazard presented by wet bathtubs as taught by Stier et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have applied the slip-resistant surface coating to the acrylic resin sheet of the molded container of Nakagawa in order to reduce the hazard presented by wet bathtubs as taught by Stier et al.

14. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagawa in view of Seymour et al.

Nakagawa teaches the molded container as discussed above. Nakagawa fails to teach that the reinforcing layer is formed integrally with a reinforcing rib of increased thickness in relation to the thickness of the remainder of the outer reinforcing shell layer. Seymour et al., however, teach a bathtub made of fiber glass reinforced plastic, the bottom of which is preferably reinforced with molded ribs (col. 4, lines 9-11 and lines 18-19). The outer reinforcing shell layer, at the location of the molded ribs, necessarily has an increased thickness in relation to the thickness of the remainder of the outer reinforcing shell layer due to the structure of ribs molded into a plastic layer. Furthermore, Seymour et al. teach a back wall with molded-in ribs which give added strength and allow the major portion of the assembly to be made of thinner fiber glass reinforced plastic without sacrificing performance (col. 4, lines 38-43). One of ordinary skill in the art would have recognized to apply the concept of the use of molded-in ribs in the back wall of the construction to allow for the use of thinner plastic sheets without sacrificing strength properties to the bathtub of the construction. Therefore, one of ordinary skill in the art would have recognized to have formed the outer reinforcing layer of Nakagawa with an integrally formed rib or with integrally formed ribs in order to allow for the use of thinner plastic sheets without sacrificing strength properties to the bathtub of the construction as taught by Seymour et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the outer reinforcing layer of Nakagawa with an integrally formed rib or with integrally formed ribs in order to allow for the use of thinner plastic sheets without sacrificing strength properties to the bathtub of the construction as taught by Seymour et al.

ANSWERS TO APPLICANTS ARGUMENTS

15. Applicant's arguments on pages 8-11 of Paper #11 regarding the 35 U.S.C. 102 and 35 U.S.C. 103 rejections of all the claims been fully considered but are not persuasive.

Applicant does not address the individual rejections, but rather vaguely refers to all the references cited by Examiner in arguing that the article is patentable over the cited references. 37 CFR 1.111(b) states "A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section." Applicant has failed to specifically point out how the language of the claims patentably distinguishes them from the references.

In response to Applicant's argument on page 8 of Paper #11 that "the outer layer of the product of Nakagawa is not injection molded, rather, it appears to be thermoformed" and therefore "not all the limitations of the present invention appear to be taught by the cited reference", the method of forming the outer layer is not germane to the issue of patentability of the outer layer itself. Therefore, the limitation that the outer layer is injection molded has not been given patentable weight.

In response to Applicants statement that "Applicants note that the technical problem of the present invention is to provide a process for producing high quality molded article", the method of forming the article is not germane to the issue of patentability of the article itself. Claims 11-17 and 25 are article claims and have therefore been treated as such by Examiner. The particular process used to produce an article is not given patentable weight in examination of article claims. If Applicant wishes to receive a patent for the process of making the article

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claimed in article claims 11-17 and 25, Applicants should file an application reciting process claims.

In response to Applicant's argument that "the technical problem of the present invention is quite different from that of the cited references" on page 9, Paper #11, this statement is made in regard to the processes used to make the articles of the instant application and of the references cited by Examiner (see three paragraphs before the paragraph in which this statement is made). The method of forming the article is not germane to the issue of patentability of the article itself.

In regard to Applicant's argument that "in the case of the molded article where the surface layer is made of transparent acrylic resin sheet by virtue of heat insulating effect in the mold, glass fiber or filler mixed in the outer reinforcing layer will not come up to the surface" the limitations on which the Applicant relies (i.e. glass fiber or filler mixed in the outer reinforcing layer will not come up to the surface) are not stated in the claims. It is the claims that define the claimed invention, and it is the claims, not specifications that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064. Furthermore, the "heat insulating effect in the mold" that Applicant's refer to is not an article limitation and is therefore not pertinent to the issue of patentability of the article itself. Nakagawa does indeed teach that the "outer reinforcing layer is "subject[ed]... to color tone/pattern", as made of record in this Office Action in the 35 U.S.C. 102(b) rejection of claim 11 as anticipated by Nakagawa, contrary to Applicant's apparent assertion that this is not taught by Nakagawa in lines 13-15 of page 9 of Paper #11. The limitations on which Applicant relies in lines 15-18 of page 9 of Paper #11, "a surface layer made of a colored, transparent or translucent acrylic resin and an outer

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reinforcing layer, the first layer of which is made of translucently colored synthetic resin” are all taught by the references relied upon in the rejections made by Examiner.

None of the four reasons that Applicant provides as to why “the molded article of the present invention is quite different from that of the cited references” are persuasive. Reason (1) is a method limitation, which is not pertinent to the issue of patentability of the article itself. In regard to reasons (2) and (4), the limitations on which the Applicant relies ((2) weight of the molded article is light, because thickness of the surface layer member and thickness of the outer reinforcing shell member are small and (4) the product of the present invention has a strength capable of withstanding severe heat test and rigidity) are not stated in the claims. It is the claims that define the claimed invention, and it is the claims, not specifications that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064. Reason (3) is indeed taught by Nakagawa, contrary to Applicant’s assertion that “the outer reinforcing member is composed of glass fiber reinforced ABS resin” and that “such a manner for reinforcing the outer reinforcing member is new”.

Applicant’s reliance on the Written Opinion referred to is not persuasive. The Written Opinion is exactly that, a written opinion. Note that the International Preliminary Examination Report was not prepared by an Examiner in the USPTO; Patent Offices in different countries have different standards for patentability. Applicant’s reliance on the “thermoforming in two stages” process limitation is not appropriate because the USPTO does not give patentable weight to process limitations in article claims.

Applicant’s assertion that “the process steps for producing the product of the present invention are neither taught nor suggested by the cited references, and therefore the product of

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the present invention is novel and unobvious over the cited references” is irrelevant because the process for producing an article is not pertinent to the patentability of the article itself and is also incorrect because the fact that the processes used to make two identical articles are different processes does not provide a patentable distinction between those two articles.

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

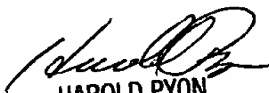
17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B Aughenbaugh whose telephone number is 703-305-4511. The examiner can normally be reached on Monday-Friday from 9:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 703-308-4251. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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02/20/03 WBA


HAROLD PYON
SUPERVISORY PATENT EXAMINER
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